

MAY 28 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARAMIS ARREDONDO,

Plaintiff - Appellant,

v.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT; et al.,

Defendants - Appellees.

No. 06-16349

D.C. No. CV-04-00593-RLH/LRL

MEMORANDUM *

Appeal from the United States District Court
for the District of Nevada
Roger L. Hunt, Chief Judge, Presiding

Submitted May 20, 2008 **

Before: PREGERSON, TASHIMA, and GOULD, Circuit Judges.

Aramis Arredondo, a Nevada state prisoner, appeals pro se from the district court's orders dismissing his action for failure to comply with a court order, and

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

denying his motion to alter the judgment, in his 42 U.S.C. § 1983 action alleging that defendants violated his civil rights by using excessive force when arresting him. We have jurisdiction under 28 U.S.C. § 1291. We review for abuse of discretion the denial of a motion to alter the judgment. *Weeks v. Bayer*, 246 F.3d 1231, 1234 (9th Cir. 2001). We vacate the district court's order denying Arredondo's motion to alter the judgment and remand for consideration of Arredondo's reply.

The district court ruled on Arredondo's motion to alter the judgment after the defendants' opposition but before receiving Arredondo's reply. The district court denied the motion, finding Arredondo failed to show he did not receive the order instructing him to sign the pretrial order. Arredondo's reply, however, contained relevant evidence regarding the prison mail log and his attempts to obtain it. Arredondo's motion and reply were timely under the mailbox rule. *See Caldwell v. Amend*, 30 F.3d 1199, 1201 (9th Cir. 1994). We therefore vacate the district court's order denying the motion and remand for the district court to consider Arredondo's reply and its attached evidence.

Arredondo's contentions that the district court judge was biased are not supported by the record. *See Toth v. Trans World Airlines, Inc.*, 862 F.2d 1381,

1388 (9th Cir. 1988) (holding that a judge's legal decisions cannot be used as evidence of bias).

In light of this disposition, we decline to consider Arredondo's remaining contentions.

We deny defendants' request for sanctions. Each party shall bear its own costs on appeal.

VACATED and REMANDED.